

JUN -9 2011

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)	
	)	FCC 11-64
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction 61 and Licensee of Various	)	Application File No.
Authorizations in the Wireless Radio Services	)	0002303355
)	
Applicant for Modification of Various Authorizations in the)	
Wireless Radio Services)	
)	
Applicant with ENCANA OIL AND GAS (USA), INC.;	)	Application File Nos.
DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP;	)	0004030479, 0004144435,
JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC	)	0004193028, 0004193328,
COOPERATIVE; PUGET SOUND ENERGY, INC.; ENBRIDGE	)	0004354053, 0004309872,
ENERGY COMPANY, INC.; INTERSTATE POWER AND LIGHT	)	0004310060, 0004314903,
COMPANY; WISCONSIN POWER AND LIGHT COMPANY;	)	0004315013, 0004430505,
DIXIE ELECTRIC MEMBERSHIP CORPORATION, INC.; ATLAS	)	0004417199, 0004419431,
PIPELINE -- MID CONTINENT, LLC; DENTON COUNTY	)	0004422320, 0004422329,
ELECTRIC COOPERATIVE, INC., DBA COSERV ELECTRIC;	)	0004507921, 0004153701,
AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY	)	0004526264, 0004636537
	)	and 0004604962
For Commission Consent to the Assignment of Various)	
Authorizations in the Wireless Radio Services)	

To: Marlene H. Dortch, Office of the Secretary
Attn: Hon. Richard L. Sippel, Chief Administrative Law Judge

Motion to Enlarge Issues¹
- Amended Text
(This is an Errata Copy)^[*]

The undersigned parties ("SkyTel") submit this motion to enlarge issues in the Commission's Order to Show Cause and Hearing Designation Order (the "OSC" or "HDO") regarding Maritime Communications/Land

¹ This Motion to Enlarge is being filed in paper with the FCC; however, SkyTel intends to supplement this Motion to Enlarge prior to the end of today, June 8, 2011, and file it in the EB Docket No. 11-71 and under the applications captioned above.

[*] Additions in dark red, and deletions in strikeout. Exhibits to this Motion to Enlarge - Amended Text are the same as those already filed by hard copy with the FCC Office of Secretary and served earlier on June 8, 2011. These will be uploaded in this docket 11-64 also.

No. of Copies rec'd 043
List A B C D E

Mobile LLC (“MCLM”) and the other assignee parties listed in the OSC caption (the “Other Parties” or the “Assignees”).²

The SkyTel Parties severally and jointly submit this motion under FCC rule Section 1.229.

For reasons stated in their recently served Request for Admissions served upon each other Party, which are referenced and incorporated herein, SkyTel asserts that it has a right to amend this Motion once SkyTel obtains substitute counsel to the Nossaman law firm that withdrew from representation of SkyTel due to a conflict created (Nossaman found that its representation of Los Angeles County- SCRRA creates a conflict, and they would not provide a conflict waiver.) SkyTel is diligently, with Nossaman, seeking substitute counsel.

Herein, “SkyTel” means Skybridge Spectrum Foundation (“Skybridge”) and the other undersigned Parties (all are managed by Warren Havens).

“MCLM,” when used herein or in attachments or referenced documents, means the same as “Maritime,” which means Maritime Communications/ Land Mobile LLC, and its real owners and controllers as well as their agents, predecessors and successors in interest, and others associated sufficiently for purposes of issues in this hearing.

The “Hearing” means the hearing under the FCC Order to Show Cause (“OSC”), FCC 11-64, and the “ALJ” means the Administrative Law Judge in the Hearing. (The “Hearing” is also called herein the “HDO proceeding” in places.)

“FCC” unless otherwise delimited, means a part or any part of the FCC as the context shows.

SkyTel requests that the Administrative Law Judge enlarge the HDO proceeding to include the following additional issues:

² *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, FCC 11-64, released April 19, 2011, 76 FR 30154.

I. Timing and Procedure Issues

SkyTel raises the following as threshold procedural issues in this Motion to Enlarge. Both of these issues have been presented multiple times in pleadings and other writings to all other Parties to this Hearing, and to the FCC Wireless Bureau, Enforcement Bureau, and Office of General Counsel.

1. SkyTel Parties Hearing Rights Under 47 USC §309(d): Said Hearings on all OSC Applications, Commencing with Maritime Long Form Must Precede this OSC Hearing

This issue is presented by SkyTel in the email in Exhibit 1 hereto which is referenced and incorporated herein. This Hearing should not proceed prior to the completion of said Section 309(d) hearings, and of those, the first one should be on the Maritime Long-Form application in Auction 61.

2. Unlawful Denial of Skybridge FOIA Request in Year 2010 of Information Essential to this Hearing, Effectively Admitted to by FCC in Recent Weeks: Prejudice to SkyTel Parties

See Exhibit 1 hereto which is referenced and incorporated herein. The issues which SkyTel seeks to add to this Hearing as threshold procedural issues are (i) the prejudice described in Exhibit 1, and related thereto, (2) that this Hearing should be stayed until the information sought in the described FOIA request is publicly released and made available to SkyTel and other Parties in this Hearing, otherwise, the Parties, at least SkyTel Parties, are prejudiced and will challenge the legitimacy of the Hearing process.

II. Substantive Issues

Preface to Section II

47 USC §411 provides (underlining added):

Joinder of Parties.

(a) In any proceeding for the enforcement of the provisions of this Act, whether such proceeding be instituted before the Commission or be begun originally in

any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

47 USC § 412 provides (underlining added):

Documents Filed To Be Public Records—Use in Proceedings.

The copies of schedules of charges, classifications, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers and other persons made to the Commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals:

The above two statutes are relevant to many of the issues posed in this Section II below.

1. Section 309 issues.

If above-said Section 309(d) petition to deny hearings are not held and completed before the Hearing, then all of the facts, arguments and issues in them should be in this Hearing. On that contingent basis, SkyTel ask these to be included in the Hearing: this applies to ~~other~~ various issues described herein including those below.

2. Misrepresentations and Misconduct Issue,
as to Maritime
and All Parties That are Assignees of Maritime Licensed Spectrum

See FCC rule section 1.229(f). The OSC and this Hearing appear to include the sort of misrepresentation and misconduct in the subject Maritime Auction 61 Long Form application described in said rule, but if the ALJ does not find that to be the case, then SkyTel moves that this issue be added.

In addition, SkyTel moves that this same issue of misrepresentation and misconduct be added in this Hearing as to all other Parties that are the assignees and lessees of Maritime licensed spectrum listed in the OSC, excluding Puget Sound Energy.³ The misconduct by all said Parties is essentially deliberate laundering of unlawfully obtained, invalid, MCLM licensed spectrum, and the misrepresentation essentially is that all said Parties repeatedly represented untruthfully to the FCC in their respective application listed in the OSC that they are unaware of any facts or law as to said MCLM license defects and MCLM licensee disqualification. Petitioners refer to and incorporate herein the facts and arguments on these matters in their pleadings in their petition to deny proceeding on each said application.

3. Lessees of Maritime spectrum,
and misrepresentation and misconduct of said lessees.

For the same reason that the Maritime spectrum assignees are Parties and otherwise subject to discovery in this Hearing, so should all the Maritime spectrum lessees. All said leases may be identified easily on ULS under the subject MCLM AMTS licenses.

See Attachment A hereto that contains a list of the MCLM leases and the lessees under those leases. Those leases and the lessees thereto should be included in the HDO proceeding since the leases are under the MCLM FCC licenses subject of the HDO proceeding already and since the lessees must have information of relevance to MCLM and the HDO proceeding, including, but not limited to, lease agreements or other contracts and understandings, written and oral communications regarding MCLM and its licensed spectrum subject of the HDO proceeding, representations and warranties from MCLM, and other information relevant to the HDO proceeding or that can be obtained through discovery. The lessees should be subject to the HDO proceeding so that they are subject to discovery in the HDO proceeding that could provide

³ For reasons indicated by PSE in the records of the assignment application from Maritime to PSE captioned in the OSC, PSE is not subject to the issue raised in this subsection II.3 of this Motion.

valuable and substantial information of decisional significance to the HDO proceeding. It is clearly in the public interest for the HDO proceeding to be enlarged to include the MCLM leases and the lessees under those leases.

4. AMTRAK

SkyTel requests that the HDO proceeding be enlarged to include AMTRAK as a party for the following reasons:

(i) SkyTel has a copy of a MCLM proposal to AMTRAK to sell AMTRAK its AMTS licensed spectrum. SkyTel's petitions and pleadings in the record before the FCC, including in the HDO proceeding and Enforcement Bureau discuss and provide details on this MCLM proposal to AMTRAK.

(ii) The FCC has commenced a docketed proceeding regarding AMTRAK proposed use of AMTS spectrum and associated waiver requests to use said spectrum: WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) REQUEST FOR WAIVER OF CERTAIN PART 80 AUTOMATED MARITIME TELECOMMUNICATIONS SYSTEM (AMTS) RULES TO IMPLEMENT POSITIVE TRAIN CONTROL (PTC) WT Docket No. 11-27. The spectrum subject of the AMTRAK waiver requests can only be the MCLM spectrum since AMTRAK does not have a contract with any of the SkyTel entities who hold both the A and B block AMTS geographic AMTS spectrum in the AMTRAK Northeast corridor. Also, as noted above, SkyTel obtained a copy of the MCLM proposal.

(iii) In response to Skybridge Spectrum Foundation's FOIA Request, FOIA Control No. 2011-241, to the FCC, the FCC provided email communications between FCC staff and Mr. John Reardon of MCLM regarding an MCLM deal with AMTRAK and possible assignment application(s) (See Exhibit 2 hereto). This further shows that MCLM and AMTRAK were discussing a purchase of MCLM's AMTS spectrum subject to the HDO proceeding. Information

from AMTRAK by way of its being subject to this Hearing will be valuable to the issues in this Hearing.

5. Spectrum Bridge Inc.

SkyTel requests that the HDO proceeding be enlarged to include Spectrum Bridge, Inc. SkyTel in its petitions and pleadings that are part of the OSC proceeding, and that are referenced and incorporated herein, showed with facts that Spectrum Bridge, Inc. and MCLM have an agreement where Spectrum Bridge, Inc. is the broker of all of MCLM's spectrum. MCLM has also admitted to that in public documents (see e.g. http://urgentcomm.com/networks_and_systems/news/spectrum-bridge-vhf-spectrum-1008/).

Also, the SkyTel pleadings, including regarding the SCRRA application, showed that Spectrum Bridge, Inc. did a fair market valuation of MCLM's AMTS spectrum for SCRRA and provided other history and background information to SCRRA regarding AMTS incumbent spectrum, including that held by MCLM that is subject of the HDO proceeding. Therefore, Spectrum Bridge, Inc. clearly has relevant information regarding MCLM and the MCLM licenses subject of the HDO and it is in the public interest that the proceeding be enlarged to include it, including, but not limited to, allowing discovery of Spectrum Bridge, Inc. by the FCC and SkyTel. Spectrum Bridge, Inc. clearly has a contract, agreement or understanding with MCLM to market and sell MCLM's AMTS spectrum subject of the HDO, is MCLM's broker, had to have conducted due diligence on MCLM and its licensed spectrum and been aware of the defects stated in the OSC, must have representations and warranties from MCLM, and must have written and oral communications with MCLM and its alleged officers, employees, etc., all of which are relevant to the OSC proceeding and could be of decisional significance.

6. MariTel, Inc. and Wireless Properties of Virginia, Inc.

The HDO proceeding should be enlarged to include MariTel, Inc. and Wireless Properties of Virginia, Inc. ("WPV") and their FCC licenses and the issues surrounding their FCC licenses for the reasons that are already given in SkyTel's petitions and other pleadings that are already part of the OSC proceeding. SkyTel hereby references and incorporates herein its petitions and pleadings and their facts and arguments regarding MariTel and WPV and their relevance to the OSC proceeding and MCLM. SkyTel's petitions showed that MariTel and WPV had the same controlling interest as MCLM, Donald DePriest, and that they are closely aligned affiliates of MCLM. MariTel and WPV clearly have information relevant to the HDO Proceeding and should be subject to discovery by the FCC and SkyTel. Also, the issues regarding the MariTel and WPV licenses relate to the MCLM issues since the controlling interest holder is the same in all of them, Donald DePriest. Thus, it is appropriate that they be included in the HDO proceeding.

7. Other MCLM Officers, Directors, Employees

SkyTel requests that the HDO proceeding be enlarged to include the other parties identified in the SkyTel petitions and pleadings before the FCC and in the HDO proceeding record, which are fully referenced and incorporated herein, that show other MCLM officers, directors, employees, and personnel not listed in the HDO proceeding, but who actively aided and abetted MCLM's rules violations. These other parties include, but are not limited to: John Reardon, Tim Smith, and Belinda Hudson. As with Sandra and Donald DePriest, they should also be part of the HDO proceeding and subject to disqualification from ever being an FCC licensee. In addition, they should be subject to discovery in the HDO proceeding since they clearly must have direct and personal knowledge of MCLM, the DePriests, and their contracts, agreements, actions and communications with other parties, including, but not limited to, assignees, lessees, prospective assignees, etc.

8. Violation of US Criminal Code

An issue that should be added, -- absent which the FCC's licensing rules, applications, and proceedings references and warnings as to violations of the US Criminal Code (28 USC §1001 et seq) (the "Criminal Code") in the case of false statements and certifications have no real meaning,-- is whether Maritime, and the assignees and lessees of its licensed spectrum, violated this Criminal Code and if so, the FCC should refer the matter to the Department of Justice ("DOJ"). A DOJ finding of violation would then be a factor, possibly decisive, in the licensing actions in the Hearing and the qualifications of Maritime and its spectrum assignees and lessees. In short, the sort of blatant cheating, warehousing, and laundering attempts by these parties, employing misrepresentation to the FCC, is indeed violation of the Criminal Code and must be pursued. If in a hearing such as this Hearing, this is not pursued, then when will it be?

9. Censure, Suspension, and Disbarment

SkyTel requests that the HDO proceeding be enlarged to include the issue of disbarment as to practice before the FCC of each attorney at law, or alleged attorney at law (assertions appear to be accepted with no proof) that represented Maritime in its actions described in the OSC and now in this Hearing, and any attorney that represented the assignees and lessees of Maritime spectrum; should they be disbarred or otherwise prohibited from further practice before the FCC, and also censured and fined, including under FCC rule sections 1.24, and 1.17 and 1.52. Maritime and said assignees and lessees acted via counsel (with a few minor exceptions) in all said licensing actions. They often speciously suggested that they did not understand their actions, or failures, or words, since they were acting via counsel, or their counsel suggested they did not know what they were really doing. This is nonsense. This is not practice of law, not to uphold the law or rights under the law, but to evade and subvert the law. Again, if in a hearing such as this rare Hearing, the instruments of the wrongdoing—the attorneys who perpetuated and attempted to cover it up—are not seriously sanctioned, then this will continue.

Sincerely,



Warren Havens, Individually and as President of the below listed entities (collectively,
“SkyTel”)

Skybridge Spectrum Foundation, FRN 0016374563
Environmental LLC, FRN 0011257086
Intelligent Transportation & Monitoring Wireless LLC, FRN 0012930582
Verde Systems LLC, FRN 0009561002
Telesaurus Holdings GB LLC, FRN 0005748660
V2G LLC, FRN 0019661297
Warren Havens, FRN 0003787694

2509 Stuart Street (principal office)
Berkeley, CA 94705
Ph: 510-841-2220
Fx: 510-740-3412

June 8, 2011

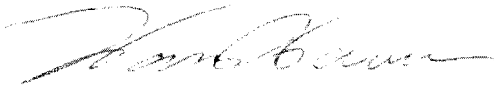
Attachment A

<u>Lease File No.</u>	<u>Lessee</u>	<u>Lessor⁴</u>
<u>0004637692</u>	Atlas Pipeline - Mid Continent LLC	MC/LM LLC
<u>0004299874</u>	DCP Midstream LP	MC/LM LLC
<u>0004651810</u>	Denton County Electric Cooperative, Inc.	MC/LM LLC
<u>0004526878</u>	Dixie Electric Membership Corporation	MC/LM LLC
<u>0004610535</u>	Enbridge Energy Company, Inc.	MC/LM LLC
<u>0003388394</u>	EnCana Oil & Gas (USA), Inc.	MC/LM LLC
<u>0003557125</u>	EnCana Oil & Gas (USA), Inc.	MC/LM LLC
<u>0004692898</u>	EnCana Oil & Gas (USA), Inc.	MC/LM LLC
<u>0004310033</u>	Jackson County Rural Membership Electric Cooperative	MC/LM LLC
<u>0003581575</u>	NRTC, LLC	MC/LM LLC
<u>0003834236</u>	Pinnacle Wireless, Inc.	MC/LM LLC
<u>0004136453</u>	Pinnacle Wireless, Inc.	MC/LM LLC
<u>0004299995</u>	Questar Market Resources, Inc.	MC/LM LLC
<u>0003796473</u>	Spectrum Tracking Systems, Inc.	MC/LM LLC

⁴ The Lessor for all of the leases in this list is Maritime Communications/Land Mobile LLC denoted in the list by "MC/LM LLC".

Declaration

I, Warren C. Havens, hereby declare, under penalty of perjury, that the foregoing Motion to Enlarge Issues was prepared pursuant to my direction and control and that all the factual statements and representations of which I have direct knowledge contained herein are true and correct.

A handwritten signature in cursive script, appearing to read "Warren C. Havens", written in black ink.

Warren C. Havens

June 8, 2011

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing **Motion to Enlarge Issues** –Errata Text along with this executed Certificate of Service is being served this 8th day of June 2011, via U.S. Mail, first class postage prepaid, upon the following:^{5/6}

Honorable Richard L. Sippel
Chief Administrative Law Judge
Office of Administrative Law Judges
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
Email: Richard.sippel@fcc.gov

P. Michele Ellison,
Chief, Enforcement Bureau
Federal Communications Commission
Attn: Pamela Kane
445 12th Street, SW
Room 7-C723
Washington, DC 20554
Email: Michele.ellison@fcc.gov

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033
Email: rjk@telcomlaw.com
Counsel for
Maritime Communications/Land Mobile LLC

Patricia J. Paoletta, Esq.
Wiltshire & Grannis LLP
1200 18th Street, N.W., Suite 1200
Washington, DC 20036
Email: tpaoletta@wiltshiregrannis.com
Counsel for
Maritime Communications/Land Mobile LLC

Jeffrey L. Sheldon
Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005
Email: jsheldon@fr.com
Counsel for
Puget Sound Energy, Inc.

⁵ The mailed, served copy being placed into a USPS drop-box today may be after business hours, and therefore, not be processed by the USPS until the next business day.

⁶ A courtesy PDF copy of this Motion is also being provided via email to the parties.

Charles A. Zdebski
Eric J. Schwalb
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
Washington, DC 20006
Email: czdebski@eckertseamans.com
eschwalb@eckertseamans.com
Counsel for
Duquesne Light Company

Albert J. Catalano
Matthew J. Plache
Catalano & Plache, PLLC
3221 M Street, NW
Washington, DC 20007
Email: ajc@catalanoplache.com
mjp@catalanoplache.com
Counsel for
Dixie Electric Membership Corporation

Jack Richards
Wesley K. Wright
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
Email: Richards@khlaw.com
Wright@khlaw.com
Counsel for
Atlas Pipeline-Mid Continent, LLC

Jack Richards
Wesley K. Wright
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
Email: Richards@khlaw.com
Wright@khlaw.com
Counsel for
DCP Midstream, LP

Jack Richards
Wesley K. Wright
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
Email: Richards@khlaw.com
Wright@khlaw.com
Counsel for
Enbridge Energy Company, Inc.

Jack Richards
Wesley K. Wright
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
Email: Richards@khlaw.com
Wright@khlaw.com
Counsel for
Encana Oil and Gas (USA), Inc.

Jack Richards
Wesley K. Wright
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
Email: Richards@khlaw.com
Wright@khlaw.com
Counsel for
**Jackson County Rural Membership
Electric Cooperative**

Kurt E. DeSoto, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006
Email: kurtdesoto@wileyrein.com
Counsel for
Interstate Power and Light Company

Kurt E. DeSoto, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006
Email: kurtdesoto@wileyrein.com
Counsel for
Wisconsin Power and Light Company

Robert M. Gurss
Paul J. Feldman
Fletcher Heald & Hildreth, PLC
1300 N. 17th Street, 11th Fl.
Arlington, VA 22209
Email: gurss@fhhlaw.com
feldman@fhhlaw.com
Counsel for
Southern California Regional Rail Authority

Gardere Wynne Sewell LLP
Attn: Robert J Miller
1601 Elm Street, Suite 2800
Dallas, TX 75201
Email: rmiller@gardere.com
Counsel for
**Denton County Electric Cooperative, Inc.
d/b/a CoServ Electric**

Dennis Brown
8124 Cooke Court, Suite 201
Manassas, VA 20109-7406
Email: d.c.brown@att.net
Counsel for
Maritime Communications/Land Mobile LLC

NRTC, LLC
ATTN General Counsel
2121 COOPERATIVE WAY
Herndon, VA 20171

Jack Richards

Wesley K. Wright
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
Email: Richards@khlaw.com
Wright@khlaw.com
Counsel for
NRTC, LLC

Pinnacle Wireless, Inc.
Michael Hayford
80 Commerce Way
Hackensack, NJ 07424

Albert J. Catalano
Matthew J. Plache
Catalano & Plache, PLLC
3221 M Street, NW
Washington, DC 20007
Email: ajc@catalanoplache.com
mjp@catalanoplache.com
Counsel for
Pinnacle Wireless, Inc.

Questar Market Resources, Inc.
ATTN M.L. Owen
PO Box 45601
Salt Lake City, UT 84145-0601

Spectrum Tracking Systems, Inc.
ATTN Jon J. Gergen
2545 Tarpley Road
Carrollton, TX 75006

William K. Keane
Duane Morris LLP
505 9th Street, N.W., Suite 1000
Washington, DC 20004-2166
Email: KKeane@duanemorris.com
Counsel for
Spectrum Tracking Systems, Inc.
Lawrence J. Movshin

Brian W. Higgins
Wilkinson Barker
2300 N. Street NW, Suite 20037
Washington DC 20037
Counsel for
AMTRAK

Counsel for
Wireless Properties of Virginia, Inc.

Michele C. Farquhar
Joel S. Winnik
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004
Email:
Michele.farquhar@hoganlovells.com
joel.winnik@hoganlovells.com)
Counsel for
PTC-220 LLC

Spectrum Bridge Inc.
1064 Greenwood Boulevard
Suite #200
Lake Mary, FL 32746
Attn: Rod Dir, President and CEO
Richard Licursi, Chairman

Russell Fox Mintz Levin
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Email: rfox@mintz.com
Counsel for
MariTel, Inc.

Jason Smith
President & CEO
MariTel, Inc.
4635 Church Rd., Suite 100
Cumming, GA 30028

Dennis Brown
8124 Cooke Court, Suite 201
Manassas, VA 20109-7406
Email: d.c.brown@att.net

A handwritten signature in black ink, appearing to read "Warren Havens", written in a cursive style.

Warren Havens,

President, Skybridge Spectrum Foundation, Environmental LLC, Intelligent Transportation and Monitoring Wireless, LLC, Verde Systems LLC, Telesaurus Holdings GB, LLC, and V2G LLC

Print - Close Window

Subject: Re: Skybridge FOIA 2010-379; requester proceeding under 47 CFR 0.461(d)(3) (WPV and MCLM)

From: Warren Havens (warren.havens@sbcglobal.net)

To: David.Senzel@fcc.gov;
d.c.brown@att.net; Michael.Connelly@fcc.gov; jstobaugh@telesaurus.com;

Cc: Scot.Stone@fcc.gov; Richard.Arsenault@fcc.gov; Jeff.Tobias@fcc.gov;
Pamela.Kane@fcc.gov; Gary.Schonman@fcc.gov; Brian.Carter@fcc.gov;
Ann.Bushmiller@fcc.gov; Joel.Kaufman@fcc.gov;

Date: Wed, 08 Jun 2011 15:02:03

Mr. Senzel,

I received your email immediately below and its attachment.

1. The subject Skybridge FOIA request was denied in full.
2. Skybridge appealed that with counsel to your OGC.
3. The OCG denied our appeal by non action on it within the time permitted. 5 U.S.C. § 552(a)(6)(A)(ii).
4. This seriously prejudiced Skybridge and all parties opposing MCLM in matters now identified in the OSC, FCC 11-64 and the hearing under that. FOIA procedure is formal. Skybridge attempted to obtain the information in its FOIA request by means indicated below, and when that failed, it filed the instant FOIA request, and that was denied initially and on appeal.
 - It is not reasonable to now inform Skybridge that any part of the FCC is now informally acting to potentially informally grant some of this twice formally denied request.[*]
 - The FCC should follow applicable law, and in FOIA time is of the essence and is established in the statute.
5. The OSC hearing, just noted, has strict formal rules and procedures including timing.
 - The denials of this Skybridge FOIA request for information central to issues in the hearing is prejudicial and Skybridge does not accept the handling of it that your letter states. This information should have been made part of the MCLM Auction 61 proceeding by the FCC apart from the Skybridge FOIA request.
 - I see nothing from any part of the FCC seeking before the ALJ in this hearing a proper extension of time due to this prejudicial situation caused by the FCC itself.
6. The OSC and its hearing itself is improper since under 47 USC 309(d) the petition to deny the MCLM long form in auction 61 clearly called for grant of the petition, as the Enforcement Bureau investigation of this matter showed, yet the petition was not granted and no hearing under 309(d)-(e) was commenced. (That is not the same as a hearing with 20 other parties, under FCC 11-64 practically, and is not the same under law either.) When the petition to deny was denied, that was appealed, but that petition for reconsideration as not acted upon in the 90 day limit set in 47 USC 405.
 - Clearly, based on these statutes, and the fact that the Enforcement Bureau investigation commenced long before the OSC (and that investigation is an effective admission that said petition to deny should have been granted, and at least then should have been granted), the hearing under said petition to deny must come before any hearing under the OSC.
 - However, again, I see no part of the FCC acting properly on this matter, including to stay the OSC hearing until

said hearing under 309 (d)-(e) is held.

7. The FCC at any time can act to properly release information in records that must be part of a public licensing proceeding. The FCC should have released publicly all information subject of the instant FOIA request in the MCLM auction 61 public licensing proceeding, and for purposes of other relevant proceedings, once it had the information. The FCC had no authority to seek information that is not relevant to those proceedings (nor does it claim that it did that).

8. As for FOIA law, if there is a FOIA request pending for agency records that contain information that was required to be filed with the agency (as opposed to voluntarily filed), then it cannot be withheld under Exemption 4 due to an alleged agency interest (one of two prongs). Critical Mass Energy Project, Appellant v. Nuclear Regulatory Commission, et al., 975 F.2d 871. The "competitive injury" prong in Critical Mass does not apply where the information sought in documents (full documents, or documents redacted to leave the requested information at least) is information that was required to be in a public filing before the agency, or is information that shows what should have been filed, or that what was filed was incorrect. The Enforcement Bureau proceeding, again, only sought said type of information. It is not relevant that this EB proceeding was or was deemed not public, what is decisive is the nature of the information it sought in the documents it required.

The above matters have been clear since before the subject FOIA request was filed, and Skybridge (and affiliates) have presented this in summary fashion scores of times, in the FOIA proceeding and in proceedings on the MCLM auction application and other application proceedings listed in the OSC FCC 11-64.

 [*] The FCC also unlawfully dealing with Skybridge by deeming it permanently a "commercial requester" in its various FOIA requests even though by law and by its actions it is not, and it has proven that to the FCC.

Skybridge holds FCC licenses and other assets, and uses them and acts only to promote high public interest wireless, and to defend the Communications Act (including from actions to the contrary by FCC staff): this is a common practice by nonprofit organizations: to both assist public agencies and also to challenge actions by agencies that are, or appear to be, contrary to the good purposes of the agency and relevant statutes. All of Skybridge FOIA requests are for this purpose, and in any case, Skybridge is under law (Delaware and IRS) a fully nonprofit organization. The FCC is deliberately violating FOIA law, for years, by improper classification of Skybridge. The reasons for that are, from all the evidence, that Skybridge and some of its contributor organizations (that the undersigned manages) do not agree with and challenge some FCC staff and Commission decisions, for very good causes shown. However, that included six year and a few hundred pleadings that eventually resulted in the Enforcement Bureau's investigation that lead to the Commission's OSC FCC 11-64 and related pending hearing proceeding. If the OSC is in the public interest, then Skybridge and affiliates actions that caused it are also, including Skybridge's FOIA requests related thereto. The FCC does not even consider the actual legal status and actions by Skybridge in its formulaic denial of Skybridge's FOIA fee waiver requests. That further shows prejudice.

Sincerely,
 Warren Havens

From: David Senzel <David.Senzel@fcc.gov>

To: warren.havens@sbcglobal.net

Cc: d.c.brown@att.net; Michael Connelly <Michael.Connelly@fcc.gov>; jstobaugh@telesaurus.com; Scot Stone <Scot.Stone@fcc.gov>; Richard Arsenault <Richard.Arsenault@fcc.gov>; Jeff Tobias <Jeff.Tobias@fcc.gov>; Pamela Kane <Pamela.Kane@fcc.gov>; Gary Schonman <Gary.Schonman@fcc.gov>; Brian Carter <Brian.Carter@fcc.gov>; Ann Bushmiller <Ann.Bushmiller@fcc.gov>; Joel Kaufman <Joel.Kaufman@fcc.gov>

Sent: Wednesday, June 8, 2011 6:40 AM

Subject: FW: Skybridge FOIA 2010-379; requester proceeding under 47 CFR 0.461(d)(3) (WPV and MCLM)

Dear Mr. Havens,

Please see the attached letter.

David S. Senzel
Attorney
Office of General Counsel

From: Warren Havens [mailto:warren.havens@sbcglobal.net]
Sent: Friday, May 20, 2011 3:17 PM
To: Michael Connelly ; d.c.brown@att.net
Cc: Jimmy Stobaugh; Scot Stone ; Richard Arsenault ; Jeff Tobias; Pamela Kane ; Gary Schonman; Jason Smith; feldman; Brian Carter
Subject: Re: Skybridge FOIA 2010-379; requester proceeding under 47 CFR 0.461(d)(3) (WPV and MCLM)

Mr. Connelly,

1. Upon initial review, a question I have is:

- Why this 2010 FOIA request, now over a year from the request, is being processed at this time (the part of the processing indicated in the two letters). In FOIA statutes and legislative intent, the "freedom of information" idea had a time element and resulted in statutes with timing.

2. Also, upon a quick look (see: http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0503/FCC-11-69A1.pdf), FOIA 2010-379 was responded to (essentially denied) and was appealed.

- What is the procedural rules and rationale for opening back up this FOIA request matter, and if that is permissible, does that not have to be by grant of, or in relation to, the appeal?

3. I copy here two FCC attorneys in the EB (Enforcement Bureau) since they are involved in the OSC FCC 11-64 and hearing thereunder, and the MCLM matters described in the OSC (including my companies petitions challenging MCLM long form in Auction 61, and the resultant EB investigation, leading to the OCS), and since our FOIA 2010-379 request was for records relevant to these matters, and which, I assert, are required by my companies for participation in these matters under legal rights, including in the hearing under the OSC.

- Thus, I assert we have been and remain prejudiced by denial of this information. I expect to take that position before the ALJ in the OSC hearing.

- I assert the same re our MariTEL related FOIA , subject of your email and letter of yesterday with substantially the same majority content as the two letters you attached to your email below: I thus cc Mr. Smith here for this purpose.

- The information we sought in said FOIA requests clearly was, or certainly principally constituted, information that MCLM and affiliates had to have accurately provided in its public FCC licensing applications, as well as their violations of FCC rules or actions that may be violations, which are also public. It is clear that documents that contain such information but also contain other parts that may be withheld under an FOIA exemption, cannot be fully withheld, and that assertions on inability to segregate cannot be asserted unless that is actually the case: but the subject sought documents were ones under active investigation by FCC, to find relevant details, and the FCC could easily segregate, if that was needed.

4. In sum, we cannot understand what the FCC is doing in this FOIA matter, in terms of relevant rules and

procedure, and why.

- What I do know is that it has been an exceedingly long time since my companies filed clearly meritorious (as in made clear in FCC 11-64, and in the petitions themselves) petitions to challenge the MCLM license applications including its long form in Auction 61 about six years ago. To this day, we are denied the hearing under 47 USC §309(d) we have a right to. Instead, the FCC by the OSC has set up a different hearing process, and one in which the FCC EB now supports MCLM and SCRRRA in being dismissed from the hearing (after they just stated they will participate in it), which the other captioned Applications predictably have joined in by similar requests. As to those others: I make no presentation here, but that statement of fact in FCC records. (If the FCC has any ex parte concerns, I will be happy to go over a pile of them related to captioned parties in the OCS, to start with, before OGC. But I am careful on my side.) I copy counsel to SCRAA, Mr. Feldman however. (He can copy Mr. Gurss as co-counsel to SCRAA and past or current counsel to MCLM-Mobex; or Mr Brown as MCLM-Mobex counsel may do that.)

Respectfully,
Warren Havens

From: Warren Havens <warren.havens@sbcglobal.net >
To: Michael Connelly <Michael.Connelly@fcc.gov>; "d.c.brown@att.net" <d.c.brown@att.net >
Cc: Jimmy Stobaugh <jstobaugh@telesaurus.com>; Scot Stone <Scot.Stone@fcc.gov>; Richard Arsenault <Richard.Arsenault@fcc.gov>; Jeff Tobias <Jeff.Tobias@fcc.gov>
Sent: Thursday, May 19, 2011 12:18 PM
Subject: Re: Skybridge FOIA 2010-379; requester proceeding under 47 CFR 0.461(d)(3) (WPV and MCLM)

Received. Thank you.

W. Havens

President
Skybridge Spectrum Foundation
ATLIS Wireless LLC
V2G LLC
Environmentel LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC
Berkeley California
www.scribd.com/warren_havens/shelf
510 841 2220 x 30
510 848 7797 -direct

From: Michael Connelly <Michael.Connelly@fcc.gov>
To: d.c.brown@att.net
Cc: Jimmy Stobaugh <jstobaugh@telesaurus.com>; Warren Havens <warren.havens@sbcglobal.net >; Scot Stone <Scot.Stone@fcc.gov>; Michael Connelly <Michael.Connelly@fcc.gov>; Richard Arsenault <Richard.Arsenault@fcc.gov>; Jeff Tobias <Jeff.Tobias@fcc.gov>
Sent: Thursday, May 19, 2011 11:55 AM
Subject: Skybridge FOIA 2010-379; requester proceeding under 47 CFR 0.461(d)(3) (WPV and MCLM)

Mr. Brown:

Attached please find PDFs of two letters being sent to you, pursuant to a Freedom of Information Act request filed by Skybridge Spectrum Foundation (Warren Havens); please note that the date by which to respond is May 31, 2011.

Thank you -

<<WPV 461d3 ltr.pdf>> <<MCLM 461d3 ltr.pdf>>

Michael E. Connelly

Attorney Advisor, Wireless/Mobility

(202) 418-0132

*** Non-Public: For Internal Use Only ***



Federal Communications Commission
Washington, D.C. 20554
June 8, 2011

Warren Havens
Skybridge Spectrum Foundation
2649 Benvenue Avenue
Berkeley, CA 94704

Dear Mr. Havens:

Thank you for your inquiry below regarding the agency's processing of your application for review (AFR) of the Wireless Telecommunications Bureau (WTB) response to FOIA 2010-379.

The Office of General Counsel has determined that it would be desirable to review the AFR with WTB informally to resolve outstanding issues pursuant to 47 C.F.R. § 0.461(j), note. The goal is for WTB to issue a supplemental response that will eliminate the need for a Commission ruling on the AFR. The supplemental response would contain rulings on the confidentiality claims raised by the other parties and additional reasoning as to whether other classes of documents should be released.

The letters you received addressed to MCLM, WPV, and MariTEL are part of this process. They are intended to provide notice of the FOIA requests to these parties, inasmuch as the FOIA request covered information they submitted to the Commission with a request for confidentiality. *See* 47 C.F.R. § 0.461(c)(3). WTB had not given such notice previously, and notice is needed to facilitate a ruling in the supplemental response on whether the material is confidential.

We ask your patience and assure you that we recognize the need for prompt action to resolve all outstanding issues.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Kaufman", is written over the typed name.

Joel Kaufman
Associate General Counsel and
Chief, Administrative Law Division
Office of General Counsel

cc:
Wireless Telecommunications Bureau

Jeff Tobias

From: Scot Stone
Sent: Thursday, December 02, 2010 9:59 AM
To: Lloyd Coward; Jeff Tobias
Cc: Roger Noel
Subject: FW: Alliant Energy Applications Filed

fyi re MC/LM-Amtrak transaction

*** Non-Public: For Internal Use Only *** -----Original Message-----

From: John Reardon [mailto:xreardon@earthlink.net]
Sent: Thursday, December 02, 2010 9:41 AM
To: Scot Stone
Subject: Re: Alliant Energy Applications Filed

Not yet, should have DEMCO today. AMTRAK still waiting, maybe on EB decision. We extended our offer to AMTRAK thru 12.31.2010 to give them time. They hafta spend stimulus funds by 2.17.2011, so whatever they do they need to get it filed fast to get okay of FCC by then. How was your Tgiving? JR

-----Original Message-----

From: Scot Stone
To: John Reardon
Subject: RE: Alliant Energy Applications Filed
Sent: Dec 2, 2010 9:19 AM

Thanks.

Still no filing for Demco or Amtrak?

-----Original Message-----

From: John Reardon [mailto:xreardon@earthlink.net]
Sent: Wednesday, December 01, 2010 2:53 PM
To: Scot Stone
Subject: Alliant Energy Applications Filed

Dear Scot,

Here is a copy of the Alliant Energy application, which was just filed.

Its for smart grid use by Wisconsin Power and Light and Interstate Power and Light, where they plan to deploy a massive smart grid system throughout the entire state of Iowa, as well as major portions of Illinois, Wisconsin, and Minnesota.

This is a very large amount of area covered with smart grid. So, please do what you can to expedite this, I appreciate it.

Sincerely,

John

Sent from my Verizon Wireless BlackBerry

000001

Lloyd Coward

From: Higgins, Brian [BHiggins@wbklaw.com]
Sent: Monday, January 03, 2011 4:59 PM
To: Lloyd Coward; Roger Noel
Cc: Movshin, Lawrence
Subject: Amtrak AMTS Rule Waiver - Attached
Importance: High
Attachments: AMTS Rules Waiver 010311 _FINAL_.pdf

Lloyd/Roger:

Attached is a copy of the AMTS Rule Waiver we are filing this evening through the Secretary's Office on Amtrak's behalf. We will follow-up with a signed, date-stamped copy tomorrow.

In the meantime, please let us know if you have any questions.

Regards,

Brian W. Higgins
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
202.383.3347
202.783.5851 (f)

This electronic message transmission contains information from the law firm of Wilkinson Barker Knauer, LLP which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please notify us by telephone at 202.783.4141 or by electronic mail (administrator@wbklaw.com) immediately.

000002

4/4/2011